

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DOUGLAS J. HORN and CINDY HARP-HORN,

Plaintiffs,

- vs -

MEDICAL MARIJUANA, INC., DIXIE ELIXIRS
AND EDIBLES, RED DICE HOLDINGS, LLC,
and DIXIE BOTANICALS,

Defendants.

ECF CASE

DECLARATION

Case No. 15-cv-701-FPG/MJR

STUART W. TITUS, PhD, declares the following, pursuant to 28 USC § 1746, under penalty of perjury:

1. I am the chief executive officer ("CEO") of defendant, Medical Marijuana, Inc. ("MMI"). My job duties include overseeing all operations and business activities of MMI.

2. I make and submit this declaration in support of MMI's and RDH's motion pursuant to Fed. R. Civ. P. 54(b) for reconsideration and revision of the Court's order denying MMI/RDH's motion for summary judgment, as relates to the Plaintiffs' RICO claim, on the basis that it was a genuine error for the Court to find that Dixie X contained "resin extract derived from the *Cannabis sativa* plant" and thus fell within the Controlled Substance Act's 2012 definition of "marijuana".

3. I provide the information contained in this declaration based upon my own personal knowledge and review of records created and/or kept in the regular course of MMI's and RDH's business.

4. "Resin" from the *cannabis sativa* plant is secreted by glands present on the surface of the plants. These glands are known as trichomes. There are two (2) types of trichomes: glandular trichomes and non-glandular trichomes. Only glandular trichomes secrete resin, while non-glandular trichomes do not secrete resin and are not associated with cannabinoid and/or terpenoid production.

5. From breeding, hemp *cannabis sativa* plants have fewer trichomes overall and no glandular trichomes on the stalk of the plant. Therefore, it is not possible to extract resin from the stalk of hemp *cannabis sativa* plants, since there is no glandular trichome present on the stalk of such plants.

6. In 2012, industrial hemp was imported from outside the United States using an FDA import license for the purpose of extracting its cannabidiol (CBD) from the stalks of those plants and formulating the Dixie X product in question in Colorado.

7. As the Dixie X product contained CBD extracted from the stalks of hemp *cannabis sativa* plants in 2012, it is not possible that such mixture contained "resin" as the stalks of hemp plants do not contain glandular trichomes, which produce "resin."

8. Upon information and belief, the Dixie X product that plaintiff Douglas Horn purchased and allegedly consumed in 2012 did not contain "resin extracted from" the *Cannabis sativa* plant."

DATED: Poway, California
July 12, 2019

/s Stuart W. Titus
Stuart W. Titus, PhD

